

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
WINCHESTER DIVISION

SKYMONT FARMS, DUSTY )  
WANAMAKER, ANTHONY WANAMAKER )  
& CATRENIA WANAMAKER, )

Plaintiffs, )

v. )

Civil Action No. 4:09-CV-65

FEDERAL CROP INSURANCE )  
CORPORATION, RISK MANAGEMENT )  
AGENCY, UNITED STATES )  
DEPARTMENT OF AGRICULTURE & )  
NAU COUNTRY INSURANCE COMPANY, )

Defendants. )

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE  
PLAINTIFFS' REQUEST FOR TRIAL BY JURY**

The United States of America, by and through James R. Dedrick, United States Attorney for the Eastern District of Tennessee, on behalf of the Federal Crop Insurance Corporation ("FCIC"), hereby files this Memorandum of Law in Support of its Motion to Strike Plaintiffs' Request for Trial by Jury and as grounds for this motion states as follows:

1. On June 24, 2009, the Plaintiffs filed a complaint against several federal defendants including the FCIC, an agency of the United States Department of Agriculture<sup>1</sup>, seeking judicial review of a crop insurance indemnity claim denied by the FCIC and from which

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<sup>1</sup> The United States also maintains that under section 1506(d) and 1508(j)(2)(A), FCIC is the only entity that may be named a defendant in a civil action except that the Secretary of Agriculture may be named as a defendant when a claim for indemnity is denied by FCIC or on FCIC's behalf. 7 U.S.C. § 1508(j)(2)(A)(2009 Pocket Part). Accordingly, FCIC is the only proper federal defendant in this civil action.

denial was upheld by the United States Department of Agriculture's National Appeals Division. In the complaint the Plaintiffs demand trial by jury.

2. In suits against the United States of America, plaintiffs are not entitled to trial by jury unless the statute waiving sovereign immunity also provides for trial by jury. *Lehman v. Nakshian*, 453 U.S. 156, 161, 101 S.Ct. 2698, 69 L.Ed.2d 548 (1981)(explaining that "if Congress waives the Government's immunity from suit...the plaintiff has a right to a trial by jury only where that right is one of the terms of the Government's consent to be sued" and where such right is "unequivocally expressed").

4. The complaint was filed, among other jurisdictional assertions, pursuant to the Federal Crop Insurance Act found at 7 U.S.C. § 1501 et seq. Complaint ¶ 7.

5. The FCIC is treated as a sovereign for sovereign immunity purposes, see, *FCIC v. Merrill*, 332 U.S. 380, 384, 68 S.Ct. 1, 3, 92 L.Ed. 10 (1947)("Government may carry on its operations through conventional executive agencies or through corporate forms..."), and the statutory sections dealing with the waiver of FCIC's sovereign immunity under the Federal Crop Insurance Act are section 1506(d) and section 1508(j)(2)(A). In neither of these sections is there a provision for trial by jury.

6. The United States maintains the above two provisions of the Federal Crop Insurance Act are the only pertinent statutes waiving the FCIC's sovereign immunity, and thus the plaintiffs' demand for a jury trial should be stricken.

WHEREFORE, based on the foregoing grounds the United States moves this Honorable Court to grant the motion and strike the jury demand.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2009, a copy of the foregoing was electronically filed. Notice of this filing will be sent by operation of the Court's electronic filing system to plaintiff's attorney, who is registered as a user of the electronic case filing system as indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

s/M. Kent Anderson  
M. KENT ANDERSON  
Assistant United States Attorney